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In The

Supreme Court of the United States

SELF-REALIZATION FELLOWSHIP CHURCH,

Petitioner,

vs.

ANANDA CHURCH OF SELF-REALIZATION, FELLOWSHIP OF INNER COMMUNION AND JAMES DONALD WALTERS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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RESTATEMENT OF THE QUESTIONS PRESENTED

This case involves the copyright to the literary works of Paramhansa Yogananda, best known as the author of *Autobiography of a Yogi*. The Ninth Circuit reversed in part the District Court's summary judgment in favor of Respondents, finding a triable issue concerning whether Yogananda intended to informally assign to Petitioner the common-law copyrights in those works. Petitioner is dissatisfied with that result, however, because it also affirmed the District Court's findings that Yogananda's writings did not qualify as "works for hire" or "corporate body" works. Petitioner therefore challenges those conclusions, asking this Court to declare Petitioner the legally recognized "author" of the literary works written by Yogananda at issue in this case. Petitioner accordingly has asked the Court to answer the following questions in the affirmative:

1. Did the Ninth Circuit create a conflict with other Circuits, requiring this Court's intervention, when it concluded that Yogananda's writings did not meet the requirements established in prior cases for "works for hire" under the 1909 Copyright Act?

2. Notwithstanding Petitioner's failure to raise this issue below, did the Ninth Circuit discriminate against religious organizations when it concluded that precedent did not extend "corporate body" authorship to works written by an identified individual?

PARTIES TO THE PROCEEDING

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STATEMENT OF FACTS

This case involves the Ninth Circuit's straightforward application of established copyright law to the unique facts before it. After Paramhansa Yogananda founded Petitioner Self-Realization Fellowship Church ("SRF") in 1935, he wrote *Autobiography of a Yogi* and many other books, articles, pamphlets, lectures and other literary works. There is no suggestion in the record that anyone other than Yogananda is the author of his works – he wrote on topics of his own choosing, in his own voice, to express his own spiritual, literary and artistic vision. Although SRF professes to follow the wisdom Yogananda thereby expressed, it nevertheless asks this Court to name it and not Yogananda as the legal "author" of his works, either under the "work for hire" doctrine (as it had been developed under the 1909 Copyright Act) or under the cases interpreting the scope of "corporate body" works referred to in the renewal provisions of Section 24 of the 1909 Act.

I. FACTUAL BACKGROUND

Paramhansa Yogananda, a monk of the Hindu-Yoga spiritual tradition, founded a school in Los Angeles in the 1920's which evolved into the "Self-Realization Fellowship." In 1935, this organization was formally incorporated as the Self-Realization Fellowship Church ("SRF"). Until his death in 1952, Yogananda was the spiritual leader, president and a board member of SRF. As is common in the Hindu-Yoga tradition, he was at all times that organization's "guru", "master" and ultimate authority, while all other church leaders and members were

commonly referred to as "disciples" or "devotees." He gave religious lectures, led devotional services, and wrote books, articles, and other literary works of a spiritual nature.

Yogananda led the life of a monastic. He formally assigned to SRF all of the property he owned at the time of SRF's incorporation in 1935, and his material possessions after that date were limited to his personal effects, some bank accounts and securities. Although Yogananda also purported to exercise control over the copyrights in his post-1935 writings,[1] the Ninth Circuit found that there was a triable controversy concerning whether he informally transferred the common law copyrights (*i.e.*, his rights prior to publication) in those works to SRF before he died. Petitioner does not seek this Court's review of that ruling.

Respondent James Donald Walters, also known as Swami Kriyananda, had been a student of Yogananda in the late 1940s, lived with him as a disciple for three and one-half years before Yogananda's passing in 1952, and

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[1] For example, at the time of the 1935 assignment, Yogananda executed a will which did not devise to SRF any of his post-1935 writings, but instead included a bequest to SRF of "one-half of the net profits" derived from any such works. Although this Will was never probated, it plainly evidences Yogananda's intention at the time to retain legal rights in his post-1935 works. Indeed, Yogananda copyrighted *Autobiography of a Yogi* in his own name in 1946 and then assigned it to a third party. Also, in 1951, Yogananda entered into a contract with an individual hired to translate six of his works into Spanish for distribution in Mexico. This contract, executed by Yogananda on behalf of himself and as President of SRF, expressly provides that Yogananda, not SRF, is the owner of copyrights to the Spanish and English versions of his works.

was a Vice President and board member of SRF until 1962. At that time, ten years after Yogananda's death, Kriyananda was forced off of the SRF board over a doctrinal dispute and was compelled to resign from the organization. He subsequently founded Respondent Ananda Church of Self-Realization ("Ananda"). Both SRF and Ananda purport to follow and disseminate the teachings of their common spiritual leader, Yogananda. In those efforts, both organizations publish from time to time certain of Yogananda's writings, spoken words and photographs.[2]

II. PROCEEDINGS IN THE DISTRICT COURT

SRF brought suit against Ananda in the Eastern District of California in 1990, alleging various forms of copyright and trademark infringement, and seeking an injunction against Ananda's use of the generic phrase "self-realization," as well as Ananda's use of Yogananda's name, writings, sound recordings, and photographic images. The District Court resolved the trademark claims favorably to Ananda on summary adjudication. Those rulings were substantially affirmed by the Ninth Circuit

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[2] The Petition improperly and falsely suggests that Ananda copied the works at issue without any license or other "claim of right." Petition at 4. No record fact supports this assertion. Moreover, while the presence or absence of dispute on that point was irrelevant to the legal issues framed by the summary judgment rulings below, Respondents are prepared to introduce evidence if and as necessary on remand to establish, among other things, that they have received the written permission of Yogananda's legal heirs to copy or otherwise use any of Yogananda's works that are not in the public domain.

Court of Appeals in *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902 (9th Cir. 1995). The trademark claims make up no part of the present Petition.

On remand, the District Court took up the remaining copyright and related claims, and again resolved them favorably to Ananda on summary judgment. The District Court concluded that it was beyond a triable controversy that Yogananda (and not SRF) was the author of the literary works at issue and that SRF was not the proprietor of the copyrights in those works. Pet. App. at 18-21. The District Court also granted summary adjudication for Ananda on SRF's claim that it had exclusive rights under Section 990 of the California Civil Code to Yogananda's name, voice, signature, photographs and likeness. Pet. App. at 22-41. SRF then dismissed with prejudice its remaining claims in order to obtain a final judgment below. Pet. App. at 41-42.

III. PROCEEDINGS IN THE COURT OF APPEAL

On appeal, the Ninth Circuit stated in its opinion that the most important issues were whether Yogananda's writings and spoken lectures could be considered works for hire or corporate body works within the meaning of the 1909 Copyright Act, or "in the alternative, whether SRF has adduced evidence from which a jury could conclude that a valid assignment of common law copyrights occurred." *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 206 F.3d 1322, 1324 (9th Cir. 2000), Pet. App. at 2.

The Ninth Circuit applied precedent developed under the Copyright Act of 1909 in affirming the District Court's ruling that Yogananda's post-1935 writings were neither "works for hire" nor "corporate body" works. These are the conclusions that are the subject of the present Petition.

The Ninth Circuit then reversed the District Court on the issue of whether SRF held valid copyrights to Yogananda's writings through an informal assignment of Yogananda's common law (*i.e.*, pre-publication) copyrights, ruling that this was a factual issue to be resolved by a jury. Pet. App. at 11. The Court further determined that if SRF were to establish an informal assignment of the common law copyrights, then under the provisions of the 1909 Act, SRF would have valid renewal rights in Yogananda's magazine articles, but not his books. Pet. App. at 12-14. The Court also affirmed the District Court's ruling that SRF had failed to advance sufficient evidence with respect to several photographs, but determined that a question of fact for a jury existed as to whether four of the photographs in issue were taken by an SRF employee and so might qualify as works for hire. Pet. App. at 17.

SRF filed a petition for rehearing and suggestion for hearing *en banc* on April 5, 2000. Although SRF had won a reversal of the summary judgment based on the Ninth Circuit's conclusion that a triable issue existed concerning whether Yogananda had informally assigned his common law copyrights to SRF, the petition for rehearing asked the Ninth Circuit to conclude that Yogananda never had any common law or other rights in those works, because SRF should be considered the "author" of

Yogananda's writings (1) under the "work for hire" doctrine under the 1909 Copyright Act, and (2) under the "corporate body" provision of the renewal rights set forth in Section 24 of the 1909 Act.

The Ninth Circuit denied the petition for rehearing and the petition for rehearing *en banc* on June 19, 2000. Pet. App. at 43.

REASONS FOR DENYING THE WRIT

The Ninth Circuit applied long-settled precedent in reaching the conclusions the Petition asks this Court to set aside. The Ninth Circuit's work for hire analysis followed decades-old precedent from the Ninth and Second Circuits. No conflict with those prior decisions was created by the Ninth Circuit's application of their rules to the facts before it. Petitioner's argument to the contrary mischaracterizes the relevant precedent as well as the Ninth Circuit's opinion applying that precedent.

Similarly, the Ninth Circuit did not "discriminate" against SRF because it was a religious organization. Indeed, Petitioner has never before made the argument that a failure to rule in its favor on the corporate body argument would, as it now claims, "disadvantage" religious organizations. The Ninth Circuit merely applied longstanding precedent holding that "corporate body" status does not attach to works having an identifiable individual author, such as the books and articles at issue written by Yogananda. There is no suggestion that the result would have been any different had SRF been a secular organization.

I. The Ninth Circuit Did Not Create a Conflict with Other Circuits.

A. Origins of the Work for Hire Doctrine.

The 1909 Copyright Act refers to "work for hire" only in connection with defining authorship and renewal rights, stating that "the word 'author' shall include an employer in the case of works made for hire." 17 U.S.C. § 26 (former 1909 Act), quoted at Pet. App. at 48. The 1909 Act did not define the terms "employer" or "work for hire." Accordingly, "the task of shaping these terms fell to the courts." 1 M. Nimmer, NIMMER ON COPYRIGHT, § 5.03[B][1][a](2000).

Until the mid 1960's, federal courts applied the work for hire doctrine only to cases in which a traditional employer/employee relationship existed between the hiring party and the creator of the work, where the work was created within the scope of that employment. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 749, 109 S.Ct. 2166, 2177, 104 L.Ed.2d 811 (1989). Under this reasoning, the "employer" who hired another to create copyrightable works was the "author" of any works created within the scope of that employment relationship.

In 1965, the Ninth Circuit expanded the scope of works for hire under the 1909 Act to apply also to commissioned works created by an independent contractor. *Lin-Brook Builders Hardware v. Gertler*, 352 F.2d 298, 300 (9th Cir. 1965). The Ninth Circuit held in *Lin-Brook* that, whether the work was created by an employee or by an independent contractor, "the presumption arises . . . that the title to the copyright shall be in the person at whose instance and expense the work is done." *Id.*

The Second Circuit followed in *Brattleboro Publishing Co. v. Winmill Publishing Corp.*, 369 F.2d 565, 567-68 (2d Cir. 1966), holding that a work by an independent contractor could be considered a work for hire, as the contractor was the equivalent of an "employee" and the hiring party an "employer" so long as the work was made at the hiring party's "instance and expense."

The "instance and expense" test was thereafter followed "when the motivating factor in producing the work was the employer who induced the creation." *Playboy Enterprises, Inc. v. Dumas*, 53 F.3d 549, 554 (2d Cir. 1995) (quoting *Picture Music, Inc. v. Bourne, Inc.*, 457 F.2d 1213, 1216 (2d Cir.), *cert. denied*, 409 U.S. 997, 93 S.Ct. 320, 34 L.Ed.2d 262 (1972)). *See also Murray v. Gelderman*, 566 F.2d 1307, 1310 (5th Cir. 1978).[3] As discussed in the next section, that longstanding rule was applied by the Ninth Circuit to the facts of this case.

B. The Ninth Circuit Correctly Applied Precedent to the Facts of this Case in Concluding that Yogananda's Writings Were Not Works for Hire.

Here, the Ninth Circuit did nothing more than apply settled precedents to the facts before it. Following the

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[3] The Copyright Act of 1976 codified in part the preexisting common law work for hire doctrine and also created a statutory category limiting the kind of commissioned works that could qualify as works for hire. *See Community for Creative Non-Violence*, 490 U.S. at 738, 109 S.Ct. at 2171. Because the 1976 Act's provisions do not govern this case, to the extent we cite the 1976 Act or related cases, it is only in regard to that section which merely codified existing common law.

Second Circuit's articulation of the "instance and expense" test, the Ninth Circuit held that "SRF has not introduced evidence that it was at SRF's 'instance' that Yogananda decided to write, teach, and lecture." Pet. App. at 7. Indeed, the record discloses that Yogananda had been doing just that for years before he founded SRF, and thereafter merely continued to do so. The opinion then went on to briefly outline the historical application of work for hire – traditionally to employees, and then later to "less traditional relationships." Pet. App. at 7. In explaining how the "instance and expense" test applied to these relationships, the Ninth Circuit mentioned well established factors such as "the regular course of business" for traditional employees (where it is presumed that the works are created at the employer's "instance"), and "the right to control or supervise" for less traditional relationships. Pet. App. at 7.

Applying these factors to the facts before it, the Ninth Circuit found that Yogananda fit under neither scheme: "SRF's relationship with Yogananda was not the type of traditional relationship" where an employee acts within the scope of duties established by an employer; nor did Petitioner introduce evidence suggesting that it had " 'the right to control or supervise the artist's work.' " Pet. App. at 7.

In the absence of evidence sufficient to establish a work for hire relationship under any previously recognized theory, the Ninth Circuit correctly concluded that Petitioner could not on that basis be deemed the author of Yogananda's writings.

C. Petitioner Argues a False Conflict Among the Circuits Based on Mischaracterization of the Ninth Circuit's Ruling.

Contrary to Petitioner's claims, the Ninth Circuit's opinion did not add "hierarchical relationships" and "the right to control" as additional requirements to the work for hire doctrine. As discussed below, Petitioner's contentions demonstrate fundamental misperceptions regarding both the "instance and expense" test as it has been developed in precedent and the Ninth Circuit's application of that precedent to the facts before it.

1. Petitioner Is Not Exempt from the "Instance and Expense" Test.

First, Petitioner claims that the Ninth Circuit "mistakenly concluded that the 'instance and expense' test applies to employees as well as independent contractors," and ignored "evidence of Yogananda's very real employment relationship." Petition, at 13-14. The law has long been clear, however, that "instance and expense" is required whether the work for hire is created by a traditional employee or by an independent contractor:

> "We believe that when one person engages another, *whether as employee or as an independent contractor*, to produce a work of an artistic nature, that in the absence of an express contractual reservation of the copyright in the artist, the presumption arises that the mutual intent of the parties is that title to the copyright shall be in the person at whose instance and expense the work is done." *Lin-Brook Builders Hardware v.*

Gertler, 352 F.2d 298, 300 (9th Cir. 1965) (emphasis added).

Quoting the above language from its prior *Lin-Brook* opinion, the Ninth Circuit here held that "to survive summary judgment on a claim for hire, SRF must 'present some credible evidence that [Yogananda's] work was done at the instance and expense' of SRF." Pet. App. at 6-7. Plainly, this application of prior precedent did not create a conflict with the very precedent being applied.

SRF is also wrong in asserting that the Ninth Circuit somehow "ignored" Yogananda's supposed status as an employee of SRF. Indeed, as the Ninth Circuit observed, "instance and expense" will be ***presumed*** in an employer-employee relationship where the work was created within the scope of the employee's duties. Pet. App. at 7. The Ninth Circuit, however, found that the requirements for work for hire were missing here because there was no evidence that Yogananda created his writings as part of his required duties, even assuming he was an employee. Pet. App. at 7. The law does not deprive a writer of authorship merely because he is employed; there must be an additional showing that the employer required the creation of the work in question. *Id.*

2. The Ninth Circuit Added no Additional "Hierarchical Relationship" Requirement.

The Petition next seeks to divert attention to the Ninth Circuit's brief mention of "hierarchical relationships," claiming that these words are an unprecedented new requirement for works for hire. The challenged language is as follows:

> "Furthermore, Nimmer explains that throughout much of the 1909 Act, courts applied the work for hire doctrine only to traditional, hierarchical relationships in which the employee created the work as part of the 'regular course of business' of the employer." Pet. App. at 7.

This sentence is embedded in the paragraph that discusses the workings of the "instance and expense" test. Pet. App. at 7. Nowhere does the opinion advance the view that "hierarchical relationships" are a new requirement for works for hire; rather, this portion of the opinion discusses the fact that Yogananda did not create his works within the scope of any supposed employment relationship – "hierarchical" or otherwise.

Thus, while the Petition states that works-for-hire could be found if their creation was within the scope of Yogananda's duties as an employee (Petition at 6), SRF points to no evidence suggesting that the works were created within that scope. As discussed in the previous section, that is why the Ninth Circuit held that "works motivated by Yogananda's own desire for self-expression or religious instruction of the public are not works for hire." Pet. App. at 7.

3. The Ninth Circuit Did Not Add an Additional "Actual Control" Requirement.

Notwithstanding Petitioner's lengthy assertions to the contrary, the Ninth Circuit has added no "actual control" requirement to establish for-hire status of works created by independent contractors. Rather, the Ninth

Circuit merely discusses the right of supervision *or* control as *implicit* in an "instance and expense" analysis for the relationships governing the creation of artistic works. The Ninth Circuit never stated or even suggested that actual control was required; it merely applied the requirements of *Playboy* and other precedents.[4]

Citing the Second Circuit opinion in *Playboy*, Petitioner argues that " 'instance' has been defined to mean simply that the commissioning party was at least one motivating factor in having the work prepared." Petition at 13. But that misquotes the *Playboy* case. The Second Circuit in *Playboy* stated that the employer must be "*the* motivating factor" (*id.*, at 556, emphasis added) and found persuasive evidence that the artist was given "specific assignments" and "certainly would not have created those particular paintings if he had not been given the assignments by Playboy." *Playboy Enterprises, Inc.*, 53 F.3d at 556. No such facts are even suggested here – SRF gave Yogananda no assignments, and there was no

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[4] Ironically, the very cases Petitioner asserts as not requiring the right to control are rife with references to control. *Playboy*, at 556 ("Playboy not only had the right to control the works but it actually controlled certain characteristics of the paintings . . . This, combined with the fact that the paintings . . . were made at Playboy's 'instance and expense,' makes those works 'works for hire' "); *Murray v. Gelderman*, 566 F.2d at 1310 ("Another factor is whether the employer had the right to direct and supervise the manner in which the work was being performed"). *See also Epoch Producing Corp. v. Killiam Shows, Inc.*, 522 F.2d 737, 744 (2d Cir. 1975); *Donaldson Publishing Co. v. Bergman, Vocco & Conn, Inc.*, 375 F.2d 639, 643 (2d Cir. 1967).

evidence that anyone other than Yogananda himself was *any* motivating factor behind his writings.

D. The Alleged Conflicts Do Not Meet the Requirements of Rule 10.

Supreme Court Rule 10 states that "a writ of certiorari will be granted only for compelling reasons." These reasons include a conflict with other United States Courts of Appeals in an "important matter." Supreme Court Rule 10(a). The Ninth Circuit's opinion was a completely orthodox application of precedent to facts, and Petitioner's attempt to manufacture a conflict cannot be reconciled with the Ninth Circuit's opinion or the precedents it applies.

At bottom, SRF's petition is a plea for the Court to apply the same precedents applied by the Ninth Circuit to reach a conclusion different from that reached by the Ninth Circuit.[5] This Court does not reach out for cases, however, "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Supreme Court Rule 10. *See also, Ticor Title*

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[5] It should also be noted that Petitioner's dire warnings about "loan out" companies (Petition at 10) are the grossest speculation. There is not one iota of evidence in the record of such harm. In any event, this risk has been apparent for decades. For example, the Second Circuit in 1967 concluded that songs written between 1928 and 1932 by the founder and dominant shareholder of a music publishing company were neither works for hire nor corporate body works. *Donaldson Publishing Co. v. Bregman, Vocco & Conn, Inc.*, 375 F.2d 639 (2d Cir. 1967).

Ins. Co. v. Brown, 511 U.S. 117, 122, 114 S.Ct. 1359, 1362, 128 L.Ed.2d 33 (1994).

II. The Ninth Circuit Did Not Discriminate Against Religious Organizations.

A. The Ninth Circuit Did Not Depart from Precedent When It Ruled on the Scope of "Corporate Body" Works.

The 1909 Act refers to corporate body works only in its renewal provisions:

> "[I]n the case of . . . any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) . . . the proprietor of such copyright shall be entitled to a renewal and extension . . . " 17 U.S.C. § 24 (former), quoted at Pet. App. 46-47.

The scope of possible corporate body works is not defined in the 1909 Act, and no reported decision has ever purported to find a "corporate body" work.[6]

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[6] In finding the corporate body doctrine inapplicable, every reported case has also noted its obscurity. *Schmid Bros, Inc. v. W. Goebel Porzellanfabrik*, 589 F. Supp. 497, 504 (E.D.N.Y. 1984) ("[i]t is not clear just what this 'corporate body' language should be read to include . . . and apparently no reported case has ever found it applicable"); *Donaldson Publishing Co. v. Bregman, Vocco & Conn, Inc.*, 375 F.2d at 642-43 ("While the meaning of this clause is not entirely plain its scope is quite limited"); *Bartok v. Boosey & Hawkes, Inc.*, 523 F.2d 941, 948 (2d Cir. 1965) ("Commentators agree that the provision for renewal rights for a 'corporate body (otherwise than as assignee or licensee of the individual author)' is practically meaningless"). Even Professor Nimmer comments that "there appears to be virtually no

Instead, the handful of cases even mentioning this provision have essentially found that it has "no application to works of this type which are authored and produced by one identifiable person either as an employee for hire or as an independent author." *Epoch Producing Corporation v. Killiam Shows, Inc.*, 522 F.2d 737, 748 (2d Cir. 1975). Indeed, noting its obscurity, Justice Learned Hand made the following observation in a 1941 *dictum*:

> "The [corporate body] class is not entirely plain . . . [I]t may include 'works' which are composed by persons who may be related to a corporation neither as employees 'for hire,' nor as assignors or licensors. (Members of a corporation producing a common 'work' by mutual contributions, fused as to be indistinguishable, may conceivably be one example.)" *Shapiro, Bernstein & Co. v. Bryan*, 123 F.2d 697, 699 (2d Cir. 1941).

In 1961, in a report to Congress on the revision of copyright law, former Register of Copyrights Barbara Ringer reiterated that "the clause has little meaning in its present context," but attempted to outline the legislative intent for the provision. B. Ringer, *Renewal of Copyright*, Report of the Register of Copyrights on the Revision of U.S. Copyright Law, Study No. 31, 86th Cong., 2d Sess., Copyright Law Revision Studies Prepared for the Subcomm. on Patents, Trademarks and Copyrights on the Judiciary (Comm. Print 1961), at 134 ("Ringer report"). The Ringer report went on to state that corporate body was "not intended to cover works by individual authors

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substantive significance in this particular phrase." 3 M. Nimmer, NIMMER ON COPYRIGHT, § 9.03[C] (1999).

written at their own volition," and rather was meant "to cover works of an *impersonal* nature, such as law digests, dictionaries, directories, etc. made by the staff or others whose individual work was merged in the whole and incapable of identification." Ringer report, at 135-136 (emphasis in original).

The Ninth Circuit determined, following the Second Circuit's quotation of the Ringer treatise with approval, that "corporate body" should have no application to works that are authored by a single, identifiable individual such as Yogananda. Pet. App. at 8 (*citing Epoch Producing Corp. v. Killiam Shows, Inc.*, 522 F.2d at 748). The Ninth Circuit's holding was completely in line with existing precedent.

Petitioner now gives great weight to a single footnote in Ringer's treatise suggesting that works written by members of a religious order might be considered works of a corporate body. (Petition at 19). It is instructive to examine the text where Petitioner's preferred footnote can be found:

> "Aside from a few other possible examples of similarly unusual situations, [footnote] ***the 'corporate body' clause appears to be a dead letter.***" (Ringer report, p. 137, emphasis added).

Moreover, the "unusual situation" hypothesized in that footnote – works written by "members" of a religious order – has no application to the present facts.[7] Undeniably, Yogananda cannot be compared to a group of SRF's

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[7] The other "unusual situation" hypothesized in the Ringer footnote is a work written by "an official or major stockholder of a corporation where the work was written directly for the

"members." He was the founder, president, and spiritual leader of SRF – *i.e.*, he was their "master" and SRF's members his "disciples" and "devotees." The record is clear that Yogananda wrote in his own voice in response to his own creative, artistic, and personal spiritual impulses. His works cannot be characterized as the collective toil of nameless "members." As Ringer makes clear in the body of her treatise, the corporate body category was "not intended to cover works by individual authors written at their own volition." (Ringer report, p. 135).

B. The Spiritual Or Religious Character of SRF Or of Yogananda's Writings Played No Part in the Ninth Circuit's Decision.

Petitioner now argues, for the first time, that the Ninth Circuit's application of precedent on the corporate body issues "will detrimentally inpact SRF's constitutional rights to religious expression and deprive SRF of equal protection under the laws." Petition at 22. That newly minted argument cannot be squared with the record or the Ninth Circuit's opinion.

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corporation but not as an employees [*sic.*] for hire." Ringer report, p. 137 n.215. This comment does not appear to have any continuing applicability, as it predates the broadening of works for hire to include those made at the "instance and expense" of another (even absent an employer-employee relationship). In any event, there is no suggestion in the Ringer report that this or any other "unusual situation" should give rise to corporate body authorship of works by an identifiable individual author.

The Ninth Circuit's conclusion is based on clear precedent: Works created by a single, identifiable individual should not be deemed corporate body works. This conclusion does not depend on the nature of the works, the nature of the author, or the nature of the organization claiming authorship as the corporate body. Indeed, those precedents, and the Ninth Circuit's conclusion here, would be equally applicable to wholly secular works. *See, e.g., Epoch*, 522 F.2d at 748 (precluding the corporate body exception to the individual author of a secular film). There is no suggestion in the opinion – and Petitioner points to none – that the Ninth Circuit's conclusion would have been any different if SRF had been a secular organization or if Yogananda's writings had touched more heavily on secular subjects.

C. In Any Event, the Petition Should Not Be Granted to Consider this Issue, Which Was Not Raised in the Court Below.

Issues cannot be raised for the first time before this Court, but must first be addressed in the lower courts. *United States v. Ortiz*, 422 U.S. 891, 898, 95 S.Ct. 2585, 2589, 45 L.Ed.2d 623 (1975). Yet, there is not even a whisper or hint of Petitioner's religious discrimination argument in any of the briefs filed with the Ninth Circuit, whether on the main appeal, or in the petition for rehearing. This Court, therefore, should not consider it now.

CONCLUSION

This Petition is but the latest phase of a decade-long effort by Petitioner to destroy a break-away church by having a court award SRF exclusive use of Yogananda's name, principal teaching, and writings. In the present Petition, this Court is asked to award to Petitioner exclusive "authorship" of Yogananda's post-1935 works in preference even to Yogananda himself and his legal heirs. The result sought by Petitioner would transform master into servant and religious persecution into equal protection. It should be no surprise, therefore, that the arguments advanced in the Petition cannot be squared with justice, precedent, the record, or this Court's rules. Respondents respectfully request that the Supreme Court deny the Petition for Writ of Certiorari.

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Respectfully submitted,

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